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Before the Subcommittee on Aviation

Committee on Public Works and Transportation

U.S. House of Representatives

Regarding H.R. 2053

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Thank you Mr. Chairman.

The Department certainly appreciates the Subcommittee's granting us this opportunity to testify on H.R. 2053. We believe this proposed legislation may have adverse consequences in terms of public policy implementation and competition in the commercial air transportation industry.

I think it would be helpful to give a short history of the Department's views on this issue in order for the Committee to understand more fully our objections to this proposal.

When the Civil Aeronautics Board in 1979 set down for investigation the intercarrier agreements which created the existing system for marketing air travel, both domestically and internationally, it did so within the framework of the pro-competitive mandate of the Airline Deregulation Act of 1978. In the ADA, Congress established a new standard by which the CAB must judge the propriety of carrier agreements that have the potential for limiting competition. This new standard requires the Board to find that any agreement which might substantially reduce or eliminate competition must meet a serious transportation need and that no less anticompetitive alternative is available to meet that need.

The CAB competitive marketing investigation (CMI) was constructed to examine five major issues: (1) the general system of common accreditation; (2) specific accreditation provisions which prevented certain entities such as business travel departments from qualifying as accredited agents; (3) the so-called "exclusivity provisions" which prevented carriers from paying compensation to anyone but an accredited agent; (4) the area settlement plan, which created a uniform system within which agents could settle accounts with carriers; and (5) the continued need for antitrust immunity.

From the start, the general system of common accreditation and the area settlement plan were strongly supported by most parties and approved nearly intact by the CAB. Under great debate, however, were, first, the provisions which prevented other types of potential retailers from becoming accredited agents; second, the exclusivity provisions; and, third, the need for antitrust immunity for those agreements.

Several of these provisions, separately and in tandem, acted to diminish competitive entry into the air travel marketing industry. First, certain of the accreditation standards unreasonably prevented otherwise qualified applicants from becoming travel agents. Requirements like the 20-percent rule which prohibited an agent from doing more than 20-percent of its business with itself, and the location rules which required that agents' offices be open full-time and be available to the public, prevented organizations like corporate business travel departments (BTD's) from qualifying as accredited agents. Similarly, the exclusivity rules prevented the carriers from paying compensation to anyone but an accredited agent, thus eliminating many potential forms of retailing.

The Department of Transportation's position in the CMI was to urge the disapproval of a number of accreditation restrictions, which we concluded

unnecessarily limited the variety of retail outlets available to the traveling public. Specifically, we noted that the elimination of the 20-percent rule and the location rules would permit additional competition.

The Department also opposed the exclusivity provisions which effectively foreclosed the non-carrier marketing of air travel to all but accredited agents. We argued that greater competition among carriers in the manner in which they marketed could expand the variety of retail outlets and result in cost-savings to carriers, which, in the newly competitive aviation industry, could result in the passing on of lower ticket prices to consumers. While we strongly supported a conference system of common accreditation, it was our view that its benefits were not premised on the exclusion of all other methods of marketing.

DOT also supported continuation of the area settlement plan. Finally, we advised the Board to continue to grant antitrust immunity to those carrier agreements which the Department believed were necessary for the continued smooth functioning of the system.

After three years of hearings and analysis of submissions, an intermediate recommendation was reached by a CAB administrative law judge. Judge Yoder recommended approval of the entire system of common accreditation and the area settlement plan, which was in accordance with the Department's views. He found, however, that competition might produce a less desirable marketing system than the industry has today, and thus recommended continuing the "agency exclusivity" provisions -- that is, continuing the requirement that any retailer acting as an agent for a carrier must be accredited by the U.S. Air Traffic Conference or the International Air Transport Association. Further, the ALJ would have continued the accreditation restrictions which had prevented other types of distribution channels

from qualifying as accredited agents. Finally, the ALJ's decision would have immunized all approved agreements from the antitrust laws.

The CAB chose a different course. The Board approved the agreements which governed the basic framework of the existing travel agent accreditation system and the area settlement plan. It disapproved, in a phased timetable, the exclusivity provisions and the disputed accreditation rules.

The Board also found that the agreements which it approved (that is, those governing the general accreditation program and the area settlement plan) were basically not anticompetitive and therefore, did not require a continuing grant of immunity. Nevertheless, to allow carriers and agents time to adjust their relationships with one another, the Board continued the existing immunity for two years with the intention of reviewing it once more before its expiration.

Although the Board's order differed from the Department of Transportation's recommendation on the antitrust immunity question, it basically followed what we outlined in our pleadings as the proper competitive track for marketing in the industry. Indeed, the Department had recommended that increased competition be put on an even faster track by immediate disapproval of both the exclusivity provisions and those provisions which limited the types of outlets which could be accredited.

The Department believes that the direction and thrust of the CAB decision was correct and in harmony with the Airline Deregulation Act of 1978. It follows directly from the clear policy directives of the statute that, absent a showing that competition cannot work, the air travel industry should be opened to the operation of market forces.

Some may argue that opening up the existing system will bring no real benefits. The important fact is that government has no business

protecting one class of competitors from other classes of known or unknown competitors. DOT does not support or oppose particular marketing alternatives. We look to the marketplace to make those decisions and oppose H.R. 2053 because its practical effect would prevent that dynamic.

The Department recognizes the value of the existing conference system, but does not believe that the system will self-destruct if agency exclusivity is disapproved. It is in the airlines' and travel agents' interests to maintain standards for the distribution network that consumers can have confidence in. There will continue to be a large market for full spectrum, full service, interline retail outlets. It makes economic sense for the carriers to maintain and participate in such a system, despite the existence of marketing alternatives. If the exclusivity requirement is removed, the use of alternatives is wholly permissive -- not mandatory. Carriers do not <u>have</u> to enter into any other type of relationship; if they do, it will not bear upon the conference relationship already established. There simply is no nexus which inextricably bonds exclusivity to the continued operation of an air transportation retailing system.

It is our belief that the effects of this legislation would be antithetical to the pro-competitive goals established for the passenger air transportation industry in the ADA. The CMI record offers numerous, unsubstantiated fears and conclusory statements that competition will produce a less desirable marketing system. Those unsubstantiated fears are simply insufficient to justify a continuing grant of antitrust immunity to the anticompetitive, exclusivity provisions of a generally sound conference system which will in large part continue effectively without them. Nor do these fears justify the creation, through this legislation, of a statutory exception to our economic system's central organizing principle of reliance on competitive market forces.

At any rate, the Board's decision has granted the industry a grace period for coming to terms with the end of antitrust immunization of carrier and agent agreements. We believe the commercial aviation industry, agents and airlines alike, is naturally a highly competitive industry which is flexible and innovative enough to respond to all of the challenges of a marketplace that is driven by market forces -- not government regulations.

The Department believes that the final order of the CAB should be permitted to remain in effect and that no legislation should be adopted. While the Board's order did not adopt all of the Department's pro-competitive recommendations, it did establish a framework and phased-timetable to introduce effective competition in the passenger air transportation market. Forebearing from enactment of this legislation and allowing the Board's order to go into effect will preserve those aspects of the ATC/IATA conference system which maintain the benefits of common accreditation, and at the same time properly bring the marketing industry into alignment with the principles which govern the rest of American business practices.

That concludes my formal statement, Mr. Chairman, but I will be pleased to answer any questions which you or the other Subcommittee Members may have.